

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

ALBERT GRAY, ADMINISTRATOR, ET AL.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. NO.: 04-312-L
	)	
JEFFREY DERDERIAN, et al.	)	
	)	
Defendants.	)	
	)	

**DEFENDANT'S, LUNA TECH, INC., ANSWER TO PLAINTIFFS'**  
**FIRST AMENDED MASTER COMPLAINT AND DEMAND FOR JURY TRIAL**

**INTRODUCTION**

NOW comes the defendant, Luna Tech, Inc. (the "defendant"), and responds to the plaintiffs' First Amended Master Complaint. The defendant responds to the plaintiffs' First Amended Master Complaint as follows:

**PARTIES**

**Plaintiffs**

1-240. The defendant is without sufficient knowledge to either admit or deny the allegations contained in paragraphs 1 through 240 and calls upon the plaintiffs for proof.

**GENERAL ALLEGATIONS AS TO ALL DEFENDANTS**

271(sic). The defendant is without sufficient knowledge to either admit or deny the allegations contained in paragraph 271(sic) and calls upon the plaintiffs for proof.

**COUNT I – COUNT XLI**

272-468. The defendant does not make a response to the allegations contained in Counts I through Counts XLI of the First Amended Master Complaint because the allegations contained within said Counts relate to the conduct of another, for whose conduct the defendant is not legally responsible. To the extent that the allegations of said Counts are intended in any manner to state a claim of liability against the defendant, they are denied.

**COUNT XLII**  
**LUNA TECH, INC. – NEGLIGENCE**

469. The defendant admits that it is a corporation organized under the laws of the state of Alabama. The defendant denies the remaining allegations contained in this paragraph and calls upon the plaintiffs for proof.
470. The defendant denies the allegations contained in this paragraph.
471. The defendant denies the allegations contained in this paragraph.
472. The defendant denies the allegations contained in this paragraph.

**COUNT XLIII**  
**LUNA TECH, INC. – STRICT LIABILITY**

473. The defendant, Luna Tech, Inc., repeats and reaffirms its responses as set forth in paragraphs 1 through 472.
474. The defendant denies the allegations contained in this paragraph.
475. The defendant denies the allegations contained in this paragraph.
476. The defendant denies the allegations contained in this paragraph.
477. The defendant denies the allegations contained in this paragraph.

**COUNT XLIV**  
**LUNA TECH, INC. – BREACH OF WARRANTY**

478. The defendant, Luna Tech, Inc., repeats and reaffirms its responses as set forth in paragraphs 1 through 477.
479. The defendant denies the allegations contained in this paragraph.
480. The defendant denies the allegations contained in this paragraph.

**COUNT XLV – COUNT LXXXI**

- 481.-706. The defendant does not make a response to the allegations contained in Counts XLV through Counts LXXXI of the First Amended Master Complaint because the allegations contained within said Counts relate to the conduct of another, for whose conduct the defendant is not legally responsible. To the extent that the allegations of said Counts are intended in any manner to state a claim of liability against the defendant, they are denied.

## **AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint should be dismissed for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2).

### **SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint should be dismissed for failure to state a claim upon which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(6).

### **THIRD AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(7) for failure to join a party under Rule 19.

### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint should be dismissed pursuant to the Doctrine of Federal Preemption as the plaintiffs' common law tort actions are preempted by federal regulations. United States Constitution, Article 6, Clause 2; Geier v. American Honda Motor Co., Inc., 120 S.Ct. 1913 (2000).

### **FIFTH AFFIRMATIVE DEFENSE**

This action is barred by operation of the applicable statute of limitations.

### **SIXTH AFFIRMATIVE DEFENSE**

The plaintiffs' claims against the defendant are barred by laches, waiver, estoppel and/or the applicable statute of limitations.

### **SEVENTH AFFIRMATIVE DEFENSE**

The acts or omissions which are alleged to have caused the damages and/or injuries referred to in the Complaint were committed by a third-party who was not an agent or employee of the defendant and for whose acts or omissions the defendant is not legally responsible.

### **EIGHTH AFFIRMATIVE DEFENSE**

The defendant alleges that the injuries and damages alleged by plaintiffs, if any, were proximately caused by the illegal, intentional and/or negligent conduct of other parties, and this defendant requests an allocation of such intentional or negligent conduct of other intervening parties and that such intervening acts could not have been anticipated by the defendant. The

Travelers Insurance Co. v. Priority Business Forms, Inc., 11 F.Supp. 2d 194 (D.R.I. 1998). Accordingly, the plaintiffs' Complaint should be dismissed.

#### **NINTH AFFIRMATIVE DEFENSE**

The defendant states that the plaintiffs' alleged injuries were not proximately caused by the defendant or by anyone for whose conduct the defendant is legally responsible.

#### **TENTH AFFIRMATIVE DEFENSE**

The plaintiffs lack standing to assert the alleged claims and, therefore, the Complaint should be dismissed.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

The plaintiffs have failed to provide timely notice of any breach of warranty, thus the plaintiffs are barred from recovery.

#### **TWELFTH AFFIRMATIVE DEFENSE**

The defendant states that it provided no warranties expressed or implied.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

If any agent or servant of the defendants made any express warranty then such warranty was made without authority, express or implied.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

The product involved in this action was changed in substance and form after it left the control of the defendant by a third party or by one whose conduct the defendant is not responsible, and such changes were the actual cause of the plaintiffs' injuries.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

The plaintiffs' claims should be dismissed because at the time of the alleged incident, the product was being misused by a third party for whom the defendant is not responsible.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

To the extent that the defendant had any obligations to the plaintiffs, and the defendant denies same, any such obligations have been fully, completely and properly performed in every respect, thus the plaintiffs are barred from recovery.

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

The defendant cannot be held liable under an express or implied warranty of merchantability for failure to warn or provide instructions about risks that were not reasonably foreseeable at the time of sale or could not have been discovered by way of reasonable testing prior to marketing the product; and, therefore, the plaintiff's Complaint should be dismissed.

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by the principles embodied in Section 402A of the Restatement (Second) of Torts, comment (i).

#### **NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claim for punitive damages cannot be sustained without bifurcating the trial of punitive damages issues in light of the defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution.

#### **TWENTIETH AFFIRMATIVE DEFENSE**

Should any liability be found on the part of this defendant, this defendant requests that the judgment against it be only in the amount which is in proportion to the extent and percent by which the defendant's acts or omissions contributed to the plaintiffs' injuries or damages. Rhode Island General Laws § 9-20-4; Fiske v. MacGregor, Div. of Brunswick, et al., 464 A.2d 719 (R.I. 1983).

#### **TWENTY-FIRST AFFIRMATIVE DEFENSE**

In the event that the defendants in this action are determined to be joint tortfeasors, the defendant asserts that it is entitled to an allocation of relative degree of fault among all joint-tortfeasors so that the pro-rata share of each defendant can be determined in accordance with the Rhode Island Uniform Contribution Among Tortfeasors Act, R.I.G.L. § 10-6-1, et seq.

**JURY DEMAND**

The defendant demands a jury trial on all issues triable at law.

Respectfully submitted,  
LUNA TECH, INC.



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Dated: 1/7/05

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was mailed electronically on 1/7/05, postage prepaid, to the following attorneys of record as of said date:

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